

No. 11491

United States
Circuit Court of Appeals
For the Ninth Circuit.

ALLEN ZIEGLER, RAYMOND ZIEGLER and
WEST COAST SUPPLY CO., a partnership,
Appellants,

vs.

PAUL A. PORTER, Administrator, Office of Price
Administration,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

JAN 24 1947

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

LAZARUS AND HORGAN,

639 S. Spring St.,

Los Angeles 14, Calif.

For Appellee:

TOWSON T. MacLAREN,

ELEANOR SHUR,

1206 S. Santee St.,

Los Angeles 15, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States
Southern District of California
Central Division
No. 5638-WM

PAUL A. PORTER, Administrator, Office of Price
Administration,

Plaintiff,

vs.

J. H. ZEIGLER, ALLEN ZEIGLER, RAYMOND
ZEIGLER, PAUL ZEIGLER, JOHN DOE
and RICHARD ROE, individually and as
partners doing business as WEST COAST
SUPPLY CO., and WEST COAST SUPPLY
CO., a partnership,

Defendants.

COMPLAINT FOR INJUNCTION

Now comes the plaintiff in the above entitled
matter and for cause of action alleges:

I.

This action arises under Section 2(a)-6 of Title
3 of the 2nd War Powers Act, as amended (56
Stat. 176, 50 U.S.C. App., Section 631, et seq.).

II.

That pursuant to the delegation of authority
granted the Price Administrator under Section 2(a)

of Title 3 of the 2nd War Powers Act, as amended, there was duly issued by the said Price Administrator, and at all times mentioned herein there was in effect Third Revised Ration Order No. 3, as amended (II Fed. Reg. 177), providing for the allocation and distribution of sugar. [2]

III.

That J. H. Zeigler, Allen Zeigler, Raymond Zeigler, Paul Zeigler, John Doe and Richard Roe are partners doing business under the firm name and style of West Coast Supply Co., with a place of business at 1654 Long Beach Avenue, City of Los Angeles, County of Los Angeles, State of California, within the jurisdiction of this Court.

IV.

That John Doe and Richard Roe named as partners above are persons whose true identity is to your plaintiff unknown and he asks that their true names may be substituted when their identity becomes known.

V.

That the said defendants are engaged in the business of dealing with sugar and are subject to the provisions of Third Revised Ration Order No. 3 (hereinafter referred to as 3 R.R.O. 3) (11 F.R. 177) as a "wholesaler" within the meaning of such 3 R.R.O. 3.

VI.

That on July 11, 1946 the defendants had a sugar ration balance to their credit in the Union Bank and Trust Company of Los Angeles of 23,196 pounds of sugar; that between July 11, 1946 and August 7, 1946, the said defendants did draw and issue and use in payment for sugar four checks totaling 1,370,000 pounds.

VII.

That the said defendants have made no deposits in the said Union Bank and Trust Company to cover the amounts of the said checks, and that the sugar ration bank account of the said defendants is now overdrawn in the amount of 1,346,804 pounds.

VIII.

That the said defendants hold title to and have control of substantial amounts of sugar at their place of business at 1654 Long Beach Avenue, City of Los Angeles, Los Angeles County, State of California; and 100,000 pounds of sugar held subject to their control and at their order by the Union Terminal Warehouse, at 737 Terminal Street, City of Los Angeles, County of Los Angeles, State of California. [3]

IX.

That the defendants, by overdrawing their sugar ration bank account and by accepting delivery and control of sugar obtained by means of invalid sugar

ration banking checks, have violated the provisions of the said 3rd R. R. O. No. 3, as amended.

X.

That unless the defendants are restrained from issuing further sugar ration banking checks and from overdrawing their ration bank account and from using or permitting the use or otherwise disposing of the sugar now subject to their order and control, the general public will be denied its right to a proper allotment and proportion of the sugar available for general public consumption.

Wherefore, the plaintiff respectfully requests the Court to grant:

1. A preliminary and final injunction—

a. Restraining and enjoining the defendants from issuing sugar ration banking checks in violation of Third Revised Ration Order No. 3.

b. Restraining and enjoining the defendants from using or permitting the use of or otherwise disposing of any and all sugar now owned by or subject to the control of the said defendants, except in such manner as shall be directed by this Court.

c. Restraining and enjoining the defendants from violating any and all of the provisions of Third Revised Ration Order No. 3 as heretofore or hereinafter amended; and

2. For such other and further relief as the

Court may deem just and proper under the circumstances.

TOWSON T. MacLAREN,
District Enforcement Attorney,

FRANCIS E. HARRINGTON,
Special Trial Attorney,

By /s/ FRANCIS E. HARRINGTON,
Attorneys for the Plaintiff.

[Endorsed]: Filed Aug. 9, 1946. [4]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER.

It appearing that the Plaintiff has filed a verified complaint in the above entitled action demanding a preliminary and final injunction and praying that a temporary restraining order be issued without notice, and it further appearing from the affidavits of Edwin A. Poehlman and Homer Lee Pouett. Jr., filed in support thereof; that the Defendants will continue to issue sugar ration banking checks without having in their ration bank account a balance sufficient to cover the amount of such checks; and will use and dispose of and put beyond their possession and control sugar obtained by means of invalid sugar ration checks, such checks having been issued to pay for sugar by the Defendants

when at the time their ration book account did not contain a balance sufficient to pay the weight value of such checks; that such checks have been issued in [5] violation of Third Revised Ration Order No. 3, as amended; that such sugar has been obtained by the Defendants in violation of the said Third Revised Ration Order No. 3, as amended; and that further violations are likely to occur, and the above-mentioned sugar is likely to be disposed of, before notice can be served and a hearing had on plaintiff's application for a preliminary injunction;

And good cause appearing therefor:

It Is Hereby Ordered that the Defendants, their officers, agents, servants, employees, attorneys and all persons in active concert or participation with the Defendants, be and they are hereby enjoined and restrained (1) from issuing any sugar ration checks or evidences to any person, and (2) from using or permitting the use or otherwise disposing in any way of any sugar now in their custody, or under their control, or subject to their order, from the date of the service of this order, to and including the further order of the Court.

It Is Further Ordered, that the Defendants herein show cause, if any there be, before the above entitled court on the 19 day of August, 1946, at 10:00 a.m., or as soon thereafter as counsel can be heard, in the courtroom of the Honorable Wm. C. Mathes, Judge of the said court, at Court Room 2 in the United States Courts and Postoffice Building, Temple and Spring Streets, in the city of Los

Angeles, County of Los Angeles, State of California, why a preliminary injunction should not issue enjoining the Defendants from issuing sugar ration banking checks, and from using or permitting the use, or otherwise disposing, of any sugar now in their control or possession, or subject to their order, except in accordance with the order of this Court.

It Is Further Ordered, that this temporary restraining order shall remain in full force and effect until the 20 day of August, 1946, or until further ordered by this court.

Issued in the City of Los Angeles, County of Los Angeles, State of California at 9 a.m. on the 10 day of August, 1946.

/s/ WM. C. MATHES,
Judge. [6]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE FOR PRELIMINARY IN-
JUNCTION.

State of California,
County of Los Angeles—ss.

Edwin A. Poehlman, being first duly sworn, deposes and says:

That he is now and has been since February 1,

1946 the duly appointed and acting District Sugar Rationing Officer of the Office of Price Administration for the Los Angeles District Office; that in such capacity he is charged with the administration of sugar rationing for the said District; that in the course of his official duties he has had occasion to inquire into the sugar rationing allotments and accounts of the West Coast Supply Company; that official records of the Office of Price Administration in his custody disclose that the West Coast Supply Company is a "wholesaler" within the meaning of Third Revised Ration Order No. 3; that as such wholesaler and in [7] accordance with the provisions of Third Revised Ration Order No. 3, the said West Coast Supply Company maintains a ration banking account with the Union Bank and Trust Company of Los Angeles; that your affiant has been advised by the said Union Bank and Trust Company that as of August 6, 1946, the said West Coast Supply Company had overdrawn its ration banking account to the extent of 1,346,804 pounds; that your affiant requested the Union Bank and Trust Company to submit a statement of such account and that the said bank sent to your affiant a statement, a photostat of which is attached to this affidavit; that the allowable inventory of the West Coast Supply Company, or the total amount of sugar and/or sugar evidences it should normally or regularly have on hand is 36,627 pounds, or less than three (3%) per-cent of the amount of such overdraft; that your affiant believes that the said West Coast Supply Company will be unable to

make deposits in its bank account of sugar ration evidences sufficient to cover the amount of the said overdraft; that a proceeding is now pending and set for hearing on August 13, 1946 before a duly appointed Hearing Commissioner of the Office of Price Administration to determine whether the right of the said West Coast Supply Company to deal with sugar should be suspended or revoked; that the supply of sugar available for use by persons entitled thereto in the Los Angeles District is in short supply; that the overdrafts issued by the West Coast Sugar Supply Company are liable to deprive persons legitimately entitled to sugar of the right and opportunity to obtain such sugar; that overdrafts of a ration bank account are prohibited by Section 15.7(d) of Third Revised Ration Order No. 3, which reads as follows: "Overdraft prohibited. No check may be issued for an amount larger than the balance in the account on which it is drawn less the amount of outstanding checks drawn on that account."; and your affiant further states that unless the said West Coast Supply Company is restrained and enjoined from issuing further checks in violation of Third Revised Ration Order No. 3 and is enjoined and restrained from using sugar acquired by means of checks drawn without amounts sufficient to cover them, that the rationing program for sugar will be imperiled and the general public and persons [8] legitimately entitled to have and use

the sugar will suffer from such violations by the said West Coast Supply Company.

/s/ EDWIN A. POEHLMAN,

Subscribed and sworn to before me this 9th day of August, 1946.

[Seal] /s/ SAMUEL R. GARB,

Notary Public in and for said
County and State.

My Commission expires February 4, 1949. [9]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE FOR PRELIMINARY IN-
JUNCTION.

State of California,
County of Los Angeles—ss.

Homer Lee Pruett, Jr., being first duly sworn,
deposes and says:

That he now is, and at all times mentioned herein has been, a Special Agent with the Division of Special Investigations, Office of Price Administration; that in the course of his official duties he was required to visit the place of business of the Union Terminal Warehouse, 737 Terminal Street, Los

Angeles, California, on August 9, 1946; that in the offices of the Union Terminal Warehouse he examined records of that company in the custody and possession of Mr. B. F. Johnston, Vice-President and General Manager of said company; that such records disclosed that a New York Central freight car No. 152555, delivered 1,000 one-hundred-pound bags of sugar to the warehouse [10] for the benefit of the West Coast Supply Co. on July 1, 1946; that a Western Pacific freight car No. 196558, delivered 1,000 one-hundred-pound bags of sugar to the warehouse for the benefit of the West Coast Supply Co. on July 3, 1946; that a Southern Pacific freight car No. 34247, delivered 1,000 one-hundred-pound bags of sugar to the warehouse for the benefit of the West Coast Supply Co. on July 29, 1946; that a Rock Island freight car No. 147259, delivered 1,000 one-hundred-pound bags of sugar to the warehouse for the benefit of the West Coast Supply Co. on July 3, 1946; that the records of the Union Terminal Warehouse disclose that there is presently stored in that warehouse and held for the benefit of the West Coast Supply Co., 100,000 pounds of sugar; and that the records of the Union Terminal Warehouse and the records of the shipments above mentioned do not show that any person other than the West Coast Supply Co. has any interest in such sugar or freight shipments of sugar; that the records of the Union Terminal Warehouse disclose that the larger part of the sugar above referred to has been delivered to the West Coast Supply Co. and that acknowledgment of delivery has been made

by one Robert A. Russell, Agent for the said West Coast Supply Co.

/s/ HOMER LEE PRUETT, JR.

Subscribed and sworn to before me this 9th day of August, 1946.

[Seal] /s/ SAMUEL R. GARB,

Notary Public in and for said
County and State.

My Commission expires February 4, 1949. [11]

Statement
In account with
UNION BANK & TRUST CO.
of Los Angeles

Savings Commercial Trust
Los Angeles, Cal.

Sugar

WEST COAST SUPPLY CO.**WHOLESALE

Checks	Deposits	Date	Balance
Balance forwarded July 11 '46			231.96
6,000.00		July 25 '46	5,768.04 od
300.00	6,600.00 800.00	Aug. 1 '46	13,468.04 od

The above is a certified copy of the statement sheets in our files from July 11, 1946 to Aug. 1, 1946.

UNION BANK & TRUST CO.
of Los Angeles
/s/ R. HARTT.

[Endorsed]: Filed Aug. 10, 1946. [12]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER.

It appearing that the plaintiff has filed a verified complaint in the above entitled action demanding a preliminary and final injunction and praying that a temporary restraining order be issued without notice; and it further appearing from the affidavits of Edwin A. Poehlman and Homer Lee Pruett, Jr., filed August 10, 1946 in support thereof that the defendants and each of them will continue to issue sugar ration banking checks without having in their ration bank account a balance sufficient to cover the amount of such checks, and will use and dispose of and but beyond their possession and control sugar obtained by means of invalid sugar ration checks, such checks having been issued to pay for sugar by the defendants and each of them at a time when their ration bank account did not contain a balance sufficient [13] to pay the weight value of such checks; and it further appearing that such checks have been issued in violation of Third Revised Ration Order No. 3, as amended, and such sugar has been obtained by the defendants and each of them in violation of the said Third Revised Ration Order No. 3, as amended; and it further appearing that violations are likely to occur, and the above-mentioned sugar is likely to be disposed of before notice can be served and a hearing had on plaintiff's application for a preliminary injunc-

tion; and it further appearing that, although the defendants, Allen Zeigler, Raymond Zeigler and West Coast Supply Co., a partnership. were served with the order to show cause and a temporary restraining order in this matter and appeared before the Honorable William C. Mathes, Judge of the United States District Court, by counsel, on August 26, 1946 on plaintiff's application for a preliminary injunction, and the court herein at said time ordered that a preliminary injunction be issued against the said Allen Zeigler, Raymond Zeigler and West Coast Supply Co., the defendants J. H. Zeigler and Paul Zeigler individually and as co-partners, doing business with other individual defendants herein as West Coast Supply Co., have never been served with the order to show cause for preliminary injunction and temporary restraining order herein and have never appeared thereon;

And good cause appearing therefor:

It Is Hereby Ordered that the defendants J. H. Zeigler and Paul Zeigler individually and as co-partners, doing business with the other individual defendants herein as West Coast Supply Co., their officers, agents, servants, employees, attorneys and all persons in active concert or participation with the defendants and each of them be and they are hereby enjoined and restrained from issuing any sugar ration checks or evidences to any person, and from using or permitting the use or otherwise disposing in any way of any sugar now in their custody, or under their control, or subject to their order

from the date of the service of this order, to and including the further order of this court.

It Is Further Ordered that the defendants J. H. Zeigler and Paul Zeigler individually and as co-partners, doing business with the other [14] individual defendants herein as West Coast Supply Co., show cause, if any there be, before the above entitled court on the 5th day of September, 1946, at 10 a.m., or as soon thereafter as counsel can be heard, in the courtroom of the Honorable William C. Mathes, Judge of the said court, at courtroom 2, in the United States Courts and Postoffice Building, Temple and Spring Streets, in the City of Los Angeles, County of Los Angeles, State of California, why a preliminary injunction should not issue enjoining the defendants J. H. Zeigler and Paul Zeigler individually and as co-partners, doing business with the other individual defendants herein as West Coast Supply Co., from issuing sugar ration banking checks, and from using or permitting the use, or otherwise disposing, of any sugar now in their control or possession, or subject to their order, except in accordance with the order of this court.

It Is Further Ordered that this temporary restraining order shall remain in full force and effect until the 5th day of September, 1946, or until further ordered by this court.

Issued in the City of Los Angeles, County of Los

Angeles, States of California at 4:05 p.m., on the 26th day of August, 1946.

/s/ WM. C. MATHES,

Judge.

[Endorsed]: Filed Aug. 26, 1946. [15]

[Title of District Court and Cause.]

INTERLOCUTORY FINDINGS OF FACT AND
CONCLUSIONS OF LAW UPON APPLI-
CATION FOR PRELIMINARY INJUNC-
TION.

This matter coming on for hearing before the Honorable William C. Mathes on August 26, 1946 on an order to show cause why preliminary injunction should not be issued restraining and enjoining defendants Allen Zeigler, Raymond Zeigler and West Coast Supply Co. and each of them from issuing any sugar ration bank checks in violation of Third Revised Ration Order No. 3, as amended, and from using or permitting the use of or otherwise disposing of any and all sugar now owned by or subject to the control of said defendants and each of them, or from violating any and all provisions of Third Revised Ration Order No. 3, as heretofore or hereafter amended, the plaintiff being represented by Eleanor Shur, Enforcement Attorney for the Office of Price Administration, and the defendants Allen Zeigler, Raymond Zeigler and West Coast Supply Co. being represented by William U. Handy, Es-

quire, and evidence submitted by way of affidavit by [16] plaintiff and the arguments of counsel for the parties all being considered, the court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. Defendants Allen Zeigler, Raymond Zeigler and West Coast Supply Co. are engaged in the business of dealing in sugar and are subject to the provisions of Third Revised Ration Order No. 3, as amended.

2. Defendants Allen Zeigler and Raymond Zeigler, with other persons, are partners doing business under the firm name and style of West Coast Supply Co., a co-partnership, with a place of business located in the City of Los Angeles, County of Los Angeles, State of California, and within the jurisdiction of this court.

3. Defendants and each of them have issued invalid sugar ration checks to pay for sugar at a time when their ration bank account did not contain a balance sufficient to pay the weight value of such checks.

4. As of August 6, 1946 the sugar ration bank account of the West Coast Supply Co. showed an overdraft of 1,346,804 pounds of sugar.

5. The allowable sugar inventory of the West Coast Supply Co. or the total amount of sugar and sugar evidences said partnership should normally have on hand is 36,627 pounds.

6. Records in the possession of the Union Terminal Warehouse on August 9, 1946 showed that 1,000 one-hundred-pound bags of sugar were delivered to the warehouse of said Union Terminal Warehouse for the benefit of the West Coast Supply Co. on July 1, 1946, that two such deliveries were made on July 3, 1946, and one more such delivery again was made on July 29, 1946. Said records further show that on August 9, 1946 said warehouse had in storage one hundred thousand (100,000) pounds of sugar for and on behalf of the West Coast Supply Co.

7. Unless restrained and enjoined defendants and each of them threaten to and will continue to issue sugar ration bank checks without having in their ration bank account a balance sufficient to cover the amount of such checks.

8. Unless restrained and enjoined defendants and each of them threaten to and will use and dispose of and put beyond their possession and [17] control sugar obtained by means of invalid sugar ration bank checks.

9. Unless defendants and each of them are restrained and enjoined from issuing further sugar ration bank checks and from overdrawing their ration bank account or from using or permitting the use of or otherwise disposing of the sugar now subject to their order and control or in their possession, the general public will be denied its right to a proper allotment and proportion of the sugar available for general public consumption.

10. Unless defendants are restrained and enjoined, further violations of Third Revised Ration Order No. 3, as amended, are likely to occur and the sugar in the possession of the defendants and each of them is likely to be disposed of before a hearing can be had and the action herein tried upon its merits and a permanent injunction issued thereon or before the Administrator of the Office of Price Administration can take final and effective administrative action to preserve or equitably distribute or dispose of such sugar.

Conclusions of Law

1. The action herein is brought pursuant to the provisions of Section 2(a)-6, Title 3, of the "Second War Powers Act".

2. Jurisdiction of this action and jurisdiction to issue the preliminary injunction herein lies within this court, pursuant to the provisions of said Section 2(a)-6 of said "Second War Powers Act".

3. At all times pertinent hereto Third Revised Ration Order No. 3, as amended, issued pursuant to the provisions of Section 2(a), Title 3, of the "Second War Powers Act", was and still is in effect.

4. Said Third Revised Ration Order No. 3, as amended, provides in Section 15.7(d) as follows:

"Overdrafts prohibited. No check may be issued for an amount larger than the balance in the account on which it is drawn less the

amount of outstanding checks drawn on that account.”

5. Said Third Revised Ration Order No. 3, as amended, further provides in Section 22.10 thereof as follows:

“Unlawful use or possession. No person shall at any [18] time either use or have in possession or under his control or take delivery of any sugar, checks, coupons, stamps or ration books, where such possession, control, or acquisition is in violation of this order.”

6. Defendants Allen Zeigler, Raymond Zeigler and West Coast Supply Co. and each of them have violated said provisions of Third Revised Ration Order No. 3, as amended, in issuing checks in excess of the balance in their sugar ration bank account and in obtaining, using, having in their possession or under their control or taking delivery of sugar obtained with invalid sugar ration checks.

7. On all of the facts and conclusions of law herein set forth, a preliminary injunction, as prayed for by plaintiff herein, shall be issued against defendants Allen Zeigler, Raymond Zeigler and the West Coast Supply Co.

Dated this 13th day of September, 1946.

/s/ WM. C. MATHES,
Judge.

Service of a copy of the above proposed Findings of Fact and Conclusions of Law is hereby acknowledged.

Dated this 29th day of August, 1946.

/s/ W. A. HANDY,

Attorney for Defendants.

[Endorsed]: Filed Sept. 13, 1946. [19]

[Title of District Court and Cause.]

JUDGMENT FOR PRELIMINARY
INJUNCTION

Plaintiff having filed his complaint and defendants Allen Zeigler, Raymond Zeigler and West Coast Supply Co., a partnership, having been served with the Complaint and Summons herein, an Order to Show Cause for Preliminary Injunction and Temporary Restraining Order and affidavits and a memorandum of points and authorities in support thereof, and having appeared by counsel, and a hearing on plaintiff's application for a preliminary injunction having been had on August 26, 1946 in the courtroom of the Honorable William C. Mathes, Judge of the above entitled court, in courtroom 2 of the United States Courthouse and Postoffice Building in the City of Los Angeles, County of Los Angeles, State of California, and Findings of Fact and Conclusions of Law having been filed, and sufficient reasons appearing therefor,

It is ordered, adjudged and decreed that a preliminary injunction issue against defendants Allen

Zeigler, Raymond Zeigler and West Coast Supply [20] Co., and each of them, their agents, servants, employees, attorneys and all persons in active concert or participation with said defendants and each of them, restraining and enjoining them, pending the hearing and determination of this action and until further order of the Court, from

1. Issuing any sugar ration bank checks in violation of Third Revised Ration Order No. 3, as amended;

2. Using or permitting the use of or otherwise disposing of any and all sugar now owned by or subject to the control of said defendants or any of them, except in such manner as shall be directed by order of the plaintiff, Administrator of the Office of Price Administration, or by his duly appointed agents on his behalf;

3. Violating any and all of the provisions of Third Revised Ration Order No. 3, as heretofore or hereafter amended.

Dated at Los Angeles, California, this 13th day of September, 1946.

/s/ WM. C. MATHES,
Judge.

[Endorsed]: Entered, docketed and filed Sept. 13, 1946. [21]

[Title of District Court and Cause.]

NOTICE OF APPEAL
INTERLOCUTORY ORDER

Notice is hereby given that Allen Ziegler, Raymond Ziegler, sued herein as Allen Zeigler and Raymond Zeigler, and the West Coast Supply Co., a partnership, appellants above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the order granting a preliminary injunction herein; the said order having been entered in this action on September 13, 1946.

LAZARUS AND HORGAN,
By PATRICK D. HORGAN,
Attorneys for Appellants.

(Affidavit of service by mail attached.)

[Endorsed]: Filed Oct. 10, 1946. [22]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL.

To Paul A. Porter, Administrator, Office of Price Administration, Plaintiff above named, Townson T. MacLaren and Eleanor Shur, his Attorneys.

You and each of you will please take notice:

That Allen Ziegler and Raymond Ziegler, Defendants, sued herein as Allen Zeigler and Ray-

mond Zeigler, and the West Coast Supply Co., a partnership, Defendant herein, having heretofore filed Notice of Appeal in the above entitled matter, and having in the Designation of Contents of Record on Appeal served herewith, not designated for inclusion for the Record on Appeal, the complete records and all the proceedings and evidence in the action, hereby serves upon you with said Designation of Contents [24] of Record on Appeal the following concise statement of points on which Appellants intend to rely on the Appeal:

I.

The Court erred in its conclusion of law and judgment that at all times pertinent herein, Third Revised Ration Order No. 3, as amended, issued pursuant to the provisions of Section 2(a), Title 3 of the Second War Powers Act, was and still is in effect.

II.

The Court erred in its conclusion of law that jurisdiction of the action and jurisdiction to issue the Preliminary Injunction lay within the Court, pursuant to the provisions of Section 2(a) 6 of the Second War Powers Act.

III.

The Complaint and the Affidavits on file herein in support thereof fail to state a claim against Appellants upon which relief by way of injunction can be granted.

Dated at Los Angeles, California, November 8, 1946.

LAZARUS AND HORGAN,
By /s/ PATRICK D. HORGAN,
Attorneys for Appellants and
Defendants. [25]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS
OF RECORD ON APPEAL

To Paul A. Porter, Administrator, Office of Price Administration, Plaintiff above named, Townson T. MacLaren and Eleanor Shur, his Attorneys.

You and each of you will please take notice:

That Allen Ziegler and Raymond Ziegler, Defendants, sued herein as Allen Zeigler and Raymond Zeigler, and the West Coast Supply Co., a partnership, Defendant herein, having heretofore filed Notice of Appeal in the above entitled matter, hereby designate the following portions of the record and proceedings to be contained in the record on appeal:

1. The Complaint filed herein on August 9, 1946.
2. The Order to Show Cause for Preliminary Injunction and Temporary Restraining Order filed herein on August 10, 1946.
3. The Affidavit of Edwin A. Poehlman in support of the Temporary Restraining Order and

Order to Show Cause for Preliminary Injunction, filed herein on August 10, 1946.

4. The Affidavit of Homer Lee Pruett, Jr., in support of Temporary Restraining Order and Order to Show Cause for Preliminary Injunction, filed herein on August 10, 1946.

5. Order to Show Cause for Preliminary Injunction and Temporary Restraining Order, filed August 26, 1946.

6. Interlocutory Findings of Facts and Conclusions of Law upon Application for Preliminary Injunction, filed herein September 13, 1946.

7. The Judgment for Preliminary Injunction made and entered herein on September 13, 1946, in Civil Order Book No. 39, Page 667.

8. Notice of Appeal.

9. Designation of Contents of Record on Appeal.

10. Statements of Points on which Appellants herein intend to rely upon Appeal.

Dated at Los Angeles, California, this 8th day of November, 1946.

LAZARUS AND HORGAN,

By /s/ PATRICK D. HORGAN,

Attorneys for Appellants and
Defendants.

[Endorsed]: Filed Nov. 8, 1946.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

State of California,

County of Los Angeles—ss.

Dorothy Clasen, being first duly sworn, deposes and says:

That Affiant is a citizen of the United States and a resident of the County of Los Angeles; that she is over the age of eighteen years, and is not a party to the within and above entitled action; that Affiant's business address is 639 South Spring Street, Room 725, L. A. Stock Exchange Building, Los Angeles, California;

That on the 8th day of November, 1946, Affiant served Appellants' Designation of Contents of Record on Appeal [28] and Statement of Points on which Appellants intend to rely upon Appeal, filed herein on November 8, 1946, on the Plaintiff in said action, by leaving copies of the same with Towson MacLaron, attorney for plaintiff, at the Office of Price Administration, 1206 Sawtel Street, Los Angeles, California.

/s/ DOROTHY CLASEN.

Subscribed and sworn to before me this 8th day of November, 1946.

[Seal] /s/ JOHN K. FORD,

Notary Public in and for said
County and State.

[Endorsed]: Filed Nov. 8, 1946. [29]

[Title of District Court and Cause.]

AFFIDAVIT AND ORDER EXTENDING TIME
TO FILE RECORD AND DOCKET APPEAL

State of California,

County of Los Angeles—ss.

Patrick D. Horgan, being first duly sworn, deposes and says:

That he is an attorney with offices at 725 L. A. Stock Exchange Building, 639 South Spring Street, Los Angeles 14, California;

That he represents Allen Ziegler, Raymond Ziegler and the West Coast Supply Co., a partnership, Appellants and Defendants in the above entitled matter;

That on October 10, 1946, Affiant filed a Notice of Appeal from the Preliminary Injunction made and entered herein on September 13, 1946;

That on November 8, 1946, Affiant filed a Designation of Contents of Record on Appeal and a Statement of Points on Which Appellants Intend to Rely on Appeal, copies of which Affiant served on Plaintiffs on November 8, 1946;

That due to the press of business and particularly to the fact that Affiant has been engaged in dissolving a law partnership and that since on or about October 15, 1946, Affiant has had to attend alone to all of the partnership business then pending, Affiant has not had an opportunity to properly

attend to the prompt filing of the record and docketing of the appeal herein;

That the time for filing of the record and docketing of appeal herein will expire on November 19, 1946.

Affiant therefore respectfully requests that this Court enter an order extending the time for the filing of the record and the docketing of the appeal to and including December 2, 1946.

Dated this 11th day of November, 1946.

LAZARUS and HORGAN,
By /s/ PATRICK D. HORGAN.

Subscribed and sworn to before me this 11th day of November, 1946.

[Seal] /s/ JAMES K. FORD,
Notary Public in and for said
County and State.

It Is So Ordered, this 12th day of November, 1946.

/s/ WM. C. MATHES,
Judge.

[Endorsed]: Filed Nov. 12, 1946. [31]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of

California, do hereby certify that the foregoing pages numbered from 1 to 31, inclusive, contain full, true and correct copies of Complaint for Injunction; Order to Show Cause for Preliminary Injunction and Temporary Restraining Order filed Aug. 10, 1946; Affidavits of Edwin A. Poehlman and Homer Lee Pruett, Jr., in Support of Temporary Restraining Order and Order to Show Cause for Preliminary Injunction; Order to Show Cause for Preliminary Injunction and Temporary Restraining Order filed Aug. 26, 1946; Interlocutory Findings of Fact and Conclusions of Law upon Application for Preliminary Injunction; Judgment for Preliminary Injunction; Notice of Appeal; Statement of Points on which Appellants Intend to Rely on Appeal; Designation of Contents of Record on Appeal; Affidavit of Service and Affidavit and Order Extending Time to File Record and Docket Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$7.70 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 26th day of November, A.D. 1946.

[Seal]

EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy Clerk.

[Endorsed]: No. 11491. United States Circuit Court of Appeals for the Ninth Circuit. Allen Ziegler, Raymond Ziegler and West Coast Supply Co., a partnership, Appellants, vs. Paul A. Porter, Administrator, Office of Price Administration, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed November 27, 1946.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
Ninth Circuit

No. 11491

J. H. ZEIGLER, ALLEN ZEIGLER, RAYMOND
ZEIGLER, PAUL ZEIGLER, JOHN DOE
and RICHARD ROE, Individually and as
partners doing business as West Coast Supply
Co., and WEST COAST SUPPLY CO., a
partnership,

Appellants,

vs.

PAUL A. PORTER, Administrator, Office of Price
Administration,

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANTS INTEND TO RELY UPON
APPEAL AND DESIGNATION OF PARTS
OF RECORD NECESSARY FOR CONSID-
ERATION OF APPEAL

Appellants, Allen Zeigler and Raymond Zeigler,
sued herein as Allen Zeigler and Raymond Zeigler
and the West Coast Supply Co., a partnership,
hereby refer to the Designation of Contents of
Record on Appeal and to the Statement of Points
on Which Appellants Intend to Rely Upon Appeal,
filed in the District Court of the United States for
the Southern District of California, Central Divi-
sion, on November 8th, 1946, and by this reference
formerly adopt such Designation of Record and

Statement of Points as their Designation of Record and Statement of Points on Which Appellants Intend to Rely Upon Appeal, required by Rule 19 (6) of the rules of the above entitled Court, to be filed with the Clerk of said Court.

Dated at Los Angeles, California, this 29th day of November, 1946.

LAZARUS and HORGAN,

By /s/ PATRICK D. HORGAN,

Attorneys for Appellants.

(Affidavit of Service attached.)

[Endorsed]: Filed Dec. 2, 1946.